

2015 Regular Session

HOUSE BILL NO. 255

BY REPRESENTATIVE PIERRE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE COMMISSIONER: Provides relative to the authority of the commissioner of insurance to supervise insurance holding company systems

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AN ACT

To amend and reenact R.S. 22:691.10(A) and R.S. 44:4.1(B)(11) and to enact R.S. 22:691.2(11) and (12), 691.9.1, and Subpart G-2 of Part III of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:691.31 through 691.39, relative to supervision of insurance holding company systems, including risk management and corporate governance, by the commissioner of insurance; to provide with respect to the authority of the commissioner to determine or acknowledge a group supervisor for internationally active insurance groups; to provide for the authority of the commissioner to require own risk and solvency assessments; to provide for confidentiality of information; to provide for sanctions for noncompliance; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:691.10(A) is hereby amended and reenacted and R.S. 22:691.2(11) and (12), 691.9.1, and Subpart G-2 of Part III of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:691.31 through 691.39, are hereby enacted to read as follows:

§691.2. Definitions

As used in this Subpart, the following terms shall have these meanings unless the context shall otherwise require:

* * *

1 (3) Has substantial insurance operations in the United States and this state
2 but the commissioner has determined pursuant to the factors set forth in Subsections
3 B and F of this Section that the other regulatory official is the appropriate
4 group-wide supervisor.

5 B. In cooperation with other state, federal, and international regulatory
6 agencies, the commissioner shall identify a single group-wide supervisor for an
7 internationally active insurance group. A commissioner identified under this Section
8 as the group-wide supervisor may determine that it is appropriate to acknowledge
9 another supervisor to serve as the group-wide supervisor. The acknowledgment of
10 the group-wide supervisor shall be made after consideration of the factors specified
11 in Paragraphs (1) through (5) of this Subsection and shall be made in cooperation
12 with and subject to the acknowledgment of other regulatory officials involved with
13 supervision of members of the internationally active insurance group, and in
14 consultation with the internationally active insurance group. The commissioner shall
15 consider the following factors and the relative scale of each when making a
16 determination or acknowledgment pursuant to this Subsection:

17 (1) The place of domicile of the insurers within the internationally active
18 insurance group that hold the largest share of the group's written premiums, assets,
19 or liabilities.

20 (2) The place of domicile of the top-tiered insurer or insurers in the insurance
21 holding company system of the internationally active insurance group.

22 (3) The location of the executive offices or largest operational offices of the
23 internationally active insurance group.

24 (4) Whether another regulatory official is acting or is seeking to act as the
25 group-wide supervisor under a regulatory system that the commissioner determines
26 to be one of the following:

27 (a) Substantially similar to the system of regulation provided pursuant to the
28 laws of this state.

1 (b) Otherwise sufficient in terms of providing for group-wide supervision,
2 enterprise risk analysis, and cooperation with other regulatory officials.

3 (5) Whether another regulatory official acting or seeking to act as the
4 group-wide supervisor provides the commissioner with reasonably reciprocal
5 recognition and cooperation.

6 C. Notwithstanding any other provision of law, when another regulatory
7 official is acting as the group-wide supervisor of an internationally active insurance
8 group, the commissioner shall acknowledge that regulatory official as the
9 group-wide supervisor. However, the commissioner shall make a determination or
10 acknowledgment pursuant to Subsection B of this Section in the event of material
11 change in the internationally active insurance group that results in one of the
12 following:

13 (1) The internationally active insurance group's insurers domiciled in this
14 state holding the largest share of the group's premiums, assets, or liabilities.

15 (2) This state being the place of domicile of the top-tiered insurer or insurers
16 in the insurance holding company system of the internationally active insurance
17 group.

18 D. Pursuant to R.S. 22:691.8, the commissioner is authorized to collect from
19 any insurer registered pursuant to R.S. 22:691.6 all information necessary to
20 determine whether the commissioner may act as the group-wide supervisor of an
21 internationally active insurance group or if the commissioner may acknowledge
22 another regulatory official to act as the group-wide supervisor. Prior to a
23 determination that an internationally active insurance group is subject to group-wide
24 supervision, the commissioner shall notify the insurer registered pursuant to R.S.
25 22:691.6 and the ultimate controlling person within the internationally active
26 insurance group. The internationally active insurance group shall have not less than
27 thirty days to provide the commissioner with additional information pertinent to the
28 pending determination. The commissioner shall publish in the Louisiana Register
29 and on the internet website of the Department of Insurance the identity of

1 internationally active insurance groups that the commissioner has determined are
2 subject to group-wide supervision by the commissioner.

3 E. If the commissioner is the group-wide supervisor for an internationally
4 active insurance group, the commissioner may engage in any of the following
5 group-wide supervision activities:

6 (1) Assess the enterprise risk within the internationally active insurance
7 group to ensure that:

8 (a) The material financial condition and liquidity risks to the members of the
9 internationally active insurance group that are engaged in the business of insurance
10 are identified by management.

11 (b) Reasonable and effective mitigation measures are in place.

12 (2) Request, from any member of an internationally active insurance group
13 subject to the commissioner's supervision, information necessary and appropriate to
14 assess enterprise risk, including but not limited to information about the members of
15 the internationally active insurance group regarding:

16 (a) Governance, risk assessment, and management.

17 (b) Capital adequacy.

18 (c) Material intercompany transactions.

19 (3) Coordinate and, through the authority of the regulatory officials of the
20 jurisdictions where members of the internationally active insurance group are
21 domiciled, compel development and implementation of reasonable measures
22 designed to ensure that the internationally active insurance group is able to timely
23 recognize and mitigate enterprise risk to members of such internationally active
24 insurance groups that are engaged in the business of insurance.

25 (4) Communicate with other state, federal, and international regulatory
26 agencies for members within the internationally active insurance group and share
27 relevant information subject to the confidentiality provisions of R.S. 22:691.10
28 through supervisory colleges as set forth in R.S. 22:691.9.

1 (5) Enter into agreements with or obtain documentation from any insurer
2 registered pursuant to R.S. 22:691.6, any member of the internationally active
3 insurance group, and any other state, federal, and international regulatory agencies
4 for members of the internationally active insurance group, providing the basis for or
5 otherwise clarifying the commissioner's role as group-wide supervisor, including
6 provisions for resolving disputes with other regulatory officials. Such agreements or
7 documentation shall not serve as evidence in any proceeding that any insurer or
8 person within an insurance holding company system not domiciled or incorporated
9 in this state is doing business in this state or is otherwise subject to jurisdiction in
10 this state.

11 (6) Other group-wide supervision activities, consistent with the authorities
12 and purposes enumerated in this Subsection, as considered necessary by the
13 commissioner.

14 F. If the commissioner acknowledges that another chief insurance regulatory
15 official from a jurisdiction that is not accredited by the NAIC is the group-wide
16 supervisor, the commissioner may reasonably cooperate, through supervisory
17 colleges or otherwise, with group-wide supervision undertaken by the group-wide
18 supervisor, provided that:

19 (1) The commissioner's cooperation is in compliance with the laws of this
20 state.

21 (2) The regulatory official acknowledged as the group-wide supervisor also
22 recognizes and cooperates with the commissioner's activities as a group-wide
23 supervisor for other internationally active insurance groups where applicable. When
24 such recognition and cooperation is not reasonably reciprocal, the commissioner may
25 refuse recognition and cooperation.

26 G. The commissioner may enter into agreements with or obtain
27 documentation from any insurer registered pursuant to R.S. 22:691.6, any affiliate
28 of the insurer, and other state, federal, and international regulatory agencies for

1 members of the internationally active insurance group, which provide the basis for
2 or otherwise clarify a regulatory official's role as group-wide supervisor.

3 H. The commissioner may promulgate rules and regulations necessary for
4 the administration of this Section.

5 I. A registered insurer subject to this Section shall be liable for and shall pay
6 the reasonable expenses of the commissioner's participation in the administration of
7 this Section, including the engagement of attorneys, actuaries, and any other
8 professionals and all reasonable travel expenses.

9 §691.10. Confidential treatment

10 A. Documents, materials, or other information in the possession or control
11 of the Department of Insurance that are obtained by or disclosed to the commissioner
12 or any other person in the course of an examination or investigation made pursuant
13 to R.S. 22:691.8 and all information reported or provided to the commissioner
14 pursuant to R.S. 22:691.4(B)(12) and (13), 691.6, ~~and 691.7,~~ and 691.9.1 shall be
15 confidential by law and privileged, shall not be subject to subpoena, and shall not be
16 subject to discovery or admissible in evidence in any private civil action. However,
17 the commissioner is authorized to use the documents, materials, or other information
18 in the furtherance of any regulatory or legal action brought as a part of the
19 commissioner's official duties. The commissioner shall not otherwise make the
20 documents, materials, or other information public without the prior written consent
21 of the insurer to which it pertains unless the commissioner, after giving the insurer
22 and its affiliates who would be affected thereby notice and opportunity to be heard,
23 determines that the interest of policyholders, shareholders, or the public will be
24 served by the publication thereof, in which event the commissioner may publish all
25 or any part in such manner as may be deemed appropriate.

26 * * *

1 SUBPART G-2. RISK MANAGEMENT AND OWN RISK
2 AND SOLVENCY ASSESSMENT

3 §691.31. Purpose and scope

4 A. The purpose of this Subpart is to provide the requirements for maintaining
5 a risk management framework and completing an own risk and solvency assessment
6 (ORSA) and the guidance and instructions for filing an ORSA summary report with
7 the commissioner.

8 B. The requirements of this Subpart shall apply to all domestic insurers
9 unless exempt pursuant to R.S. 22:691.36.

10 C. The legislature finds and declares that the ORSA summary report will
11 contain confidential and sensitive information related to the identification of risk
12 material and relevant to the insurer or insurance group filing the report. Public
13 disclosure of the information in the ORSA summary report will cause harm to and
14 competitive disadvantage for the insurer or insurance group. The legislature intends
15 that the ORSA summary report be filed with the commissioner as a confidential
16 document, shared only as stated in this Subpart to assist in the performance of the
17 commissioner's duties, and exempted from public disclosure.

18 §691.32. Definitions

19 For purposes of this Subpart:

20 (1) "Insurance group" means, for the purpose of conducting an ORSA, those
21 insurers and affiliates included within an insurance holding company system as
22 defined in R.S. 22:691.2(5).

23 (2) "Insurer" means an insurer as defined in R.S. 22:46 except that it shall
24 not include agencies, authorities, or instrumentalities of the United States, its
25 possessions and territories, the Commonwealth of Puerto Rico, the District of
26 Columbia, or a state or political subdivision of a state.

27 (3) "NAIC" means the National Association of Insurance Commissioners.

28 (4) "Own risk and solvency assessment" or "ORSA" means a confidential
29 internal assessment, appropriate to the nature, scale, and complexity of an insurer or

1 insurance group, conducted by that insurer or insurance group of the material and
2 relevant risks associated with the insurer's or insurance group's current business plan,
3 and the sufficiency of capital resources to support those risks.

4 (5) "ORSA Guidance Manual" means the current version of the "Own Risk
5 and Solvency Assessment Guidance Manual" developed and adopted by the NAIC
6 and as amended from time to time. A change in the ORSA Guidance Manual shall
7 be effective on the January first following the calendar year in which the changes are
8 adopted by the NAIC.

9 (6) "ORSA summary report" means a confidential high-level summary of an
10 insurer's or insurance group's ORSA.

11 §691.33. Risk management framework

12 An insurer shall maintain a risk management framework to assist the insurer
13 with identifying, assessing, monitoring, managing, and reporting on its material and
14 relevant risks. This requirement may be satisfied if the insurance group of which it
15 is a member maintains a risk management framework applicable to the operations
16 of the insurer.

17 §691.34. ORSA requirement

18 Subject to R.S. 22:691.36, an insurer, or the insurance group of which it is
19 a member, shall regularly conduct an ORSA consistent with the ORSA Guidance
20 Manual. An insurer, or the insurance group of which it is a member, shall conduct
21 the ORSA no less than annually and any time there are significant changes to the risk
22 profile of the insurer or the insurance group of which it is a member.

23 §691.35. ORSA summary report

24 A. Upon the commissioner's request, and no more than once each year, an
25 insurer shall submit to the commissioner an ORSA summary report or any
26 combination of reports that together contain the information described in the ORSA
27 Guidance Manual, applicable to the insurer, the insurance group of which it is a
28 member, or both. Notwithstanding any request from the commissioner, if the insurer
29 is a member of an insurance group, the insurer shall submit the report required by

1 this Subsection if the commissioner is the lead state commissioner of the insurance
2 group as determined by the procedures within the Financial Analysis Handbook
3 adopted by the National Association of Insurance Commissioners.

4 B. The report shall include a signature and an attestation based on the
5 knowledge, information, and belief of the insurer or insurance group's chief risk
6 officer or other executive having responsibility for the oversight of the insurer's
7 enterprise risk management process that the insurer applies the enterprise risk
8 management process described in the ORSA summary report and that a copy of the
9 report has been provided to the insurer's board of directors or the appropriate
10 committee of such board.

11 C. An insurer may comply with Subsection A of this Section by providing
12 the most recent and substantially similar report provided by the insurer or another
13 member of an insurance group of which it is a member to the commissioner of
14 another state or to a supervisor or regulator of a foreign jurisdiction, if that report
15 provides information that is comparable to the information described in the ORSA
16 Guidance Manual. Any such report in a language other than English must be
17 accompanied by a translation of that report into the English language.

18 §691.36. Exemption

19 A. An insurer shall be exempt from the requirements of this Subpart, if both
20 of the following apply:

21 (1) The insurer has annual direct written and unaffiliated assumed premium,
22 including international direct and assumed premium but excluding premiums
23 reinsured with the Federal Crop Insurance Corporation and National Flood
24 Insurance Program, less than five hundred million dollars.

25 (2) The insurance group of which the insurer is a member has annual direct
26 written and unaffiliated assumed premium, including international direct and
27 assumed premium but excluding premiums reinsured with the Federal Crop
28 Insurance Corporation and National Flood Insurance Program, less than one billion
29 dollars.

1 B. If an insurer qualifies for exemption pursuant to Paragraph (1) of
2 Subsection A of this Section, but the insurance group of which it is a member does
3 not qualify for exemption pursuant to Paragraph (2) of Subsection A of this Section,
4 the ORSA summary report that may be required pursuant to R.S. 22:691.35 shall
5 include every insurer within the insurance group. This requirement may be satisfied
6 by the submission of more than one ORSA summary report for any combination of
7 insurers provided any combination of reports includes every insurer within the
8 insurance group.

9 C. If an insurer does not qualify for exemption pursuant to Paragraph (1) of
10 Subsection A of this Section, but the insurance group of which it is a member
11 qualifies for exemption pursuant to Paragraph (2) of Subsection A of this Section,
12 then the only ORSA summary report that may be required pursuant to R.S. 22:691.35
13 shall be the report applicable to that insurer.

14 D. An insurer that does not qualify for exemption pursuant to Subsection A
15 of this Section may apply to the commissioner for a waiver from the requirements
16 of this Subpart based upon unique circumstances. In deciding whether to grant the
17 insurer's request for waiver, the commissioner may consider the type and volume of
18 business written, ownership, and organizational structure, and any other factor the
19 commissioner considers relevant to the insurer or insurance group of which it is a
20 member. If the insurer is part of an insurance group with insurers domiciled in more
21 than one state, the commissioner shall coordinate with the lead state commissioner
22 and with the other domiciliary commissioners in considering whether to grant the
23 insurer's request for a waiver.

24 E. Notwithstanding the exemptions stated in this Section:

25 (1) The commissioner may require that an insurer maintain a risk
26 management framework, conduct an ORSA, and file an ORSA summary report
27 based on unique circumstances, including but not limited to the type and volume of
28 business written, ownership, and organizational structure, federal agency requests,
29 and international supervisor requests.

1 (2) The commissioner may require that an insurer maintain a risk
2 management framework, conduct an ORSA, and file an ORSA summary report if the
3 insurer has a risk-based capital for company action level event as set forth in R.S.
4 22:611 et seq. or 631 et seq., meets one or more of the standards of an insurer
5 deemed to be in hazardous financial condition as defined in regulations promulgated
6 by the commissioner, or otherwise exhibits qualities of a troubled insurer as
7 determined by the commissioner.

8 F. If an insurer ceases to qualify for an exemption pursuant to Subsection A
9 of this Section due to changes in premium as reflected in the insurer's most recent
10 annual statement or in the most recent annual statements of the insurers within the
11 insurance group of which it is a member, the insurer shall have one year following
12 the year the premium threshold is exceeded to comply with the requirements of this
13 Subpart.

14 §691.37. Contents of ORSA summary report

15 A. The ORSA summary report shall be prepared consistent with the ORSA
16 Guidance Manual, subject to the requirements of Subsection B of this Section.
17 Documentation and supporting information shall be maintained and made available
18 upon examination by or request of the commissioner.

19 B. The review of the ORSA summary report, and any additional requests for
20 information, shall be made using similar procedures currently used in the analysis
21 and examination of multistate or global insurers and insurance groups.

22 §691.38. Confidentiality

23 A. Documents, materials, or other information, including the ORSA
24 summary report, in the possession or control of the commissioner that are obtained
25 by, created by, or disclosed to the commissioner or any other person pursuant to this
26 Subpart are proprietary and contain trade secrets. All such documents, materials, or
27 other information shall be confidential and privileged, shall not be subject to
28 disclosure under the Public Records Law, shall not be subject to subpoena, and shall
29 not be subject to discovery or admissible in evidence in any private civil action.

1 However, the commissioner may use the documents, materials, or other information
2 in the furtherance of any regulatory or legal action brought as a part of the
3 commissioner's official duties. The commissioner shall not otherwise make the
4 documents, materials, or other information public without the prior written consent
5 of the insurer.

6 B. Neither the commissioner nor any person who receives documents,
7 materials, or other ORSA-related information, through examination or otherwise,
8 while acting pursuant to the authority of the commissioner or with whom such
9 documents, materials, or other information are shared pursuant to this Subpart shall
10 be permitted or required to testify in any private civil action concerning any
11 confidential documents, materials, or information subject to Subsection A of this
12 Section.

13 C. In order to assist in the performance of the commissioner's regulatory
14 duties, the commissioner:

15 (1) May, upon request, share documents, materials, or other ORSA-related
16 information, including the confidential and privileged documents, materials, or
17 information subject to Subsection A of this Section, including proprietary and trade
18 secret documents and materials, with other state, federal, and international financial
19 regulatory agencies, including members of any supervisory college as defined in R.S.
20 22:691.9, with the NAIC, and with any third-party consultants designated by the
21 commissioner, provided that the recipient agrees in writing to maintain the
22 confidentiality and privileged status of the ORSA-related documents, materials, or
23 other information and has verified in writing the legal authority to maintain
24 confidentiality.

25 (2) May receive documents, materials, or other ORSA-related information,
26 including otherwise confidential and privileged documents, materials, or
27 information, including proprietary and trade-secret information or documents, from
28 regulatory officials of other foreign or domestic jurisdictions, including members of
29 any supervisory college as defined in R.S. 22:691.9, and from the NAIC, and shall

1 maintain as confidential or privileged any documents, materials, or information
2 received with notice or the understanding that it is confidential or privileged pursuant
3 to the laws of the jurisdiction that is the source of the document, material, or
4 information.

5 (3) Shall enter into a written agreement with the NAIC or a third-party
6 consultant governing the sharing and use of information provided pursuant to this
7 Subpart, consistent with this Subsection that shall include all of the following:

8 (a) Specify procedures and protocols regarding the confidentiality and
9 security of information shared with the NAIC or a third-party consultant pursuant to
10 this Subpart, including procedures and protocols for sharing by the NAIC with other
11 state regulators from states in which the insurance group has domiciled insurers. The
12 agreement shall provide that the recipient agrees in writing to maintain the
13 confidentiality and privileged status of the ORSA-related documents, materials, or
14 other information and has verified in writing the legal authority to maintain
15 confidentiality.

16 (b) Specify that ownership of information shared with the NAIC or a
17 third-party consultant pursuant to this Subpart remains with the commissioner and
18 the NAIC's or a third-party consultant's use of the information is subject to the
19 direction of the commissioner.

20 (c) Prohibit the NAIC or third-party consultant from storing the information
21 shared pursuant to this Subpart in a permanent database after the underlying analysis
22 is complete.

23 (d) Require prompt notice be given to an insurer whose confidential
24 information in the possession of the NAIC or a third-party consultant pursuant to this
25 Subpart is subject to a request or subpoena to the NAIC or a third-party consultant
26 for disclosure or production.

27 (e) Require the NAIC or a third-party consultant to consent to intervention
28 by an insurer in any judicial or administrative action in which the NAIC or a third-

1 party consultant may be required to disclose confidential information about the
2 insurer shared with the NAIC or a third-party consultant pursuant to this Subpart.

3 (f) Provide for the insurer's written consent in the case of an agreement
4 involving a third-party consultant.

5 D. The sharing of information and documents by the commissioner pursuant
6 to this Subpart shall not constitute a delegation of regulatory authority or rulemaking,
7 and the commissioner is solely responsible for the administration, execution, and
8 enforcement of the provisions of this Subpart.

9 E. No waiver of any applicable privilege or claim of confidentiality in the
10 documents, proprietary and trade-secret materials, or other ORSA-related
11 information shall occur as a result of disclosure of such ORSA-related information
12 or documents to the commissioner pursuant to this Section or as a result of sharing
13 as authorized in this Subpart.

14 F. Documents, materials, or other information in the possession or control
15 of the NAIC or third-party consultants pursuant to this Subpart shall be confidential
16 and privileged, shall not be subject to disclosure pursuant to the Public Records Law,
17 shall not be subject to subpoena, and shall not be subject to discovery or admissible
18 in evidence in any private civil action.

19 §691.39. Sanctions

20 Any insurer failing, without just cause, to timely file the ORSA summary
21 report as required by this Subpart shall be required, after notice and hearing, to pay
22 a penalty of one hundred dollars for each day's delay, to be recovered by the
23 commissioner and the penalty so recovered shall be deposited upon receipt in the
24 state treasury. The maximum penalty under this Section shall be ten thousand
25 dollars. The commissioner may reduce the penalty if the insurer demonstrates to the
26 commissioner that the imposition of the penalty would constitute a financial hardship
27 to the insurer.

as the group-wide supervisor and for evaluating material changes in the insurance group that would justify changing the group-wide supervisor.

Proposed law authorizes the commissioner of insurance to request information necessary to make a determination of group-wide supervision and provides for the confidentiality of that information by creating an exemption from the Public Records Law for such information.

Proposed law enacts the National Association of Insurance Commissioners' (NAIC) Risk Management and Own Risk and Solvency Assessment (ORSA) Model Act, as follows:

- (1) Refers to the NAIC Own Risk and Solvency Assessment Guidance Manual for the requirements for an insurer or a insurance group (defined as insurers and affiliates included within an insurance holding company system) in preparing an own risk and solvency assessment (ORSA) and ORSA summary report. Requires the maintenance of a risk management framework to assist an insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks.
- (2) Provides for requirements and exemptions from ORSA reporting. Additionally gives the commissioner of insurance discretion to require a risk management framework for otherwise exempt insurers or groups based on unique circumstances, a risk-based capital event, or evidence of being in a hazardous financial condition.
- (3) Provides that certain documents, materials, or other information shall be confidential and privileged, shall not be subject to disclosure under the Public Records Law, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.
- (4) Mandates that any insurer failing, without just cause, to timely file an ORSA summary report be required, after notice and hearing, to pay a penalty of \$100 for each day's delay, to be recovered by the commissioner and deposited upon receipt in the state treasury. Sets the maximum penalty at \$10,000. Allows the commissioner to reduce the penalty if the insurer demonstrates to him that the imposition of the penalty would constitute a financial hardship to it.

Effective Jan. 1, 2016.

(Amends R.S. 22:691.10(A) and R.S. 44:4.1(B)(11); Adds R.S. 691.2(11) and (12), 691.9.1, and R.S. 22:691.31 - 691.39)